**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION.**

**CIVIL APPLICATION NO.4668 OF 2006**

**IN**

**FIRST APPEAL NO.1805 OF 2005**

State of Maharashtra & Anr. : Applicants.

versus

Shrestipal Chimanlal Malhotra
Prop. of Espee & Co.
since deceased through his LRs.
Smt.Swatantradevi Shrestipal
Malhotra & ors. : Respondents.

Mr.Siddhartha Karpe i/by Y.K.S.Legal for the applicants.

Mr.V.Z.Kankaria for the respondents.

**CORAM : D.G.DESHPANDE**

**SMT.R.S.DALVI, JJ.**

**DATED : NOVEMBER 21, 2006.**

**P.C.**

1. Heard advocate Mr.Karpe for the applicants/State and advocate Mr.Kankaria for the respondents/decree holders.

2. Prayer in this application is for staying the execution of warrant dated 13.6.2006 issued by the Civil Judge, Senior Division, Thane. In this appeal an order was passed by the Division Bench on 18th October 2005 directing the appellant to deposit Rs.77,61,272/- with interest at the rate of 18% p.a. and costs in the trial court. According to the calculations made by the decree holders, the amount comes to Rs.Two crores Thirty Five lakhs and odd. The State Government deposited Rs.Two Crores and Three lakhs in the trial court disputing the remaining amount. Therefore, the warrant came to be issued for remaining amount and now this application for stay is opposed by advocate Mr.Kankaria appearing for the respondents on two grounds. According to him the appellants, after appearing before the Executing Court, had given an undertaking vide Exhibit 3 of this Civil Application to the Court

to deposit the amount by 12th June 2006. The exact statement made in that application is "with reference to the subject and suit mentioned above and as directed by the High Court, the amount of deposit shall be deposited in the court as per warrant. According to advocate Mr.Kankaria this is the undertaking given by the Executive Engineer and, therefore, now this application cannot be filed. Secondly, he contended that there is no hundred per cent compliance to the directions given by this Court in its order dated 18th October 2005, because full amount of Rs.Two Crores Thirty Five lakhs have not been deposited by the appellants.

3. We do not find any substance in both these contentions of Mr.Kankaria. The statement made before the Executing Court as per Exhibit 3 is not an undertaking. In any case on the date of filing of this undertaking, the appeal is pending and that cannot be prevented from moving this court for appropriate orders. Secondly, there is substantial compliance with the order of this Court regarding deposit. Amount of Rs.Two crores and three lakhs have been deposited and that amount has been withdrawn by the decree

holders against solvent security. Therefore, this civil application is allowed. Execution of warrant and execution proceedings before the Executing Court i.e. Civil Judge, Senior Division, Thane are stayed, pending appeal. Civil Application is disposed of.

**[D.G.DESHPANDE,J]**

**[SMT.R.S.DALVI, J]**